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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Tricam Industries, Inc.

Serial No. 75/824,369

Bruce H. Little and Barrett M. Weber of Lindquist & Vennum  
P.L.L.P. for Tricam Industries, Inc.

Cimmerian Coleman, Trademark Examining Attorney, Law Office  
102 (Thomas Shaw, Managing Attorney).

Before Simms, Seeherman and Bottorff, Administrative  
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Tricam Industries, Inc. has appealed from the final  
refusal of the Trademark Examining Attorney to register  
UNIFRAME as a trademark for "metal ladders."<sup>1</sup> Registration  
has been refused pursuant to Section 2(d) of the Trademark  
Act, 15 U.S.C. §1052(d), on the ground that applicant's

<sup>1</sup> Application Serial No. 75/824,369, filed October 18, 1999, and  
asserting a bona fide intention to use the mark in commerce.

mark so resembles the mark UNIFRAME, previously registered for "vinyl windows and doors,"<sup>2</sup> that, if used on applicant's identified goods, it is likely to cause confusion or mistake or to deceive.

The appeal has been fully briefed, but applicant did not request an oral hearing.

We reverse.

Our determination on the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in **In re E. I. du Pont de Nemours & Co.**, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. **Federated Foods, Inc. v. Fort Howard Paper Co.**, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Turning first to the goods, applicant argues at some length that the goods (vinyl windows and doors, and metal ladders) are specifically different, and are used for different purposes. However, as the Examining Attorney points out, it is not necessary that the goods of the parties be similar or competitive, or even that they move

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<sup>2</sup> Registration No. 1,865,795, issued December 6, 1994, Section 8 affidavit accepted; Section 15 affidavit received.

in the same channels of trade to support a holding of likelihood of confusion, as long as they are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same producer. **In re International Telephone & Telegraph Corp.**, 197 USPQ 910, 911 (TTAB 1978).

Thus, we must consider whether the Office has shown a sufficient relationship between the goods that consumers are likely to believe that they originate from the same producer. In support of her position that applicant's and the registrant's goods are related, the Examining Attorney has asserted that they are all home improvement products. However, the fact that a single term can be found that may generally describe the goods is not a sufficient basis for finding them to be related. See **General Electric Company v. Graham Magnetics Incorporated**, 197 USPQ 690 (TTAB 1977); **Harvey Hubbell Incorporated v. Tokyo Seimitsu Co., Ltd.**, 188 USPQ 517 (TTAB 1975).

The Examining Attorney has also made of record a number of third-party registrations in an attempt to show that the goods are related. Third-party registrations

which individually cover a number of different items and which are based on use in commerce serve to suggest that the listed goods and/or services are of a type which may emanate from a single source. See **In re Albert Trostel & Sons Co.**, 29 USPQ2d 1783 (TTAB 1993). However, in reviewing these ten registrations, we note that three are based on Section 44 of the Trademark Act, and thus are not based on use in commerce. In two other registrations the items doors, windows and ladders have been deleted from the identification of goods. The remaining registrations list metal windows, doors and ladders; however, two of these five registrations are owned by the same company, while a third lists a wide variety of structural steel products, including culverts, guard rails, flood gates and trash intake screens for sewage plants and power plants. We cannot consider this registration to show that all of the listed goods are related, nor can we conclude, on the basis of the limited number of probative registrations which have been made of record, that consumers would consider ladders, and windows and doors, to emanate from the same source if sold under the same mark. Simply put, because of the obvious differences in the nature and purposes of windows and doors, on the one hand, and ladders, on the other, the very limited evidence submitted by the Examining Attorney

in terms of the third-party registrations is not sufficient to demonstrate that applicant's identified goods and those identified in the cited registration are related.

The Examining Attorney also asserts that vinyl windows and doors and metal ladders are marketed in the same manner and appeal to the same consumers. In her brief the Examining Attorney makes the unsupported statement that "such goods are likely to be marketed in television, magazine, radio and print advertisements" and "are likely to be sold in home improvement, hardware, and retail stores and are likely to be available to the general consumer and contractors who use home improvement products." p. 5. As to the first point, obviously a wide variety of goods are advertised on television and radio and in publications such as magazines. Clearly all such goods are not related, nor would consumers assume a connection in source simply because they are advertised in television commercials, etc. The Examining Attorney has not submitted any proof that vinyl windows and doors and metal ladders are advertised together, such that consumers would assume a connection in source if they were sold under the same mark. Similarly, the fact that both types of products can be found in home improvement stores (assuming this is the case; again, the Examining Attorney has not submitted any evidence to this

effect), does not establish the necessary relationship between the goods. A wide variety of items are sold in home improvement stores, and this fact alone is not sufficient to find that confusion is likely.

This brings us to a consideration of the marks. The marks, clearly, are identical. However, as applicant has pointed out, the use of identical marks does not necessarily mandate a finding of likelihood of confusion. In this case, the registered mark UNIFRAME has a suggestive connotation for windows and doors. The scope of protection to be accorded a suggestive mark is more limited than the protection accorded to an arbitrary mark. Moreover, the connotation of UNIFRAME in the context of windows and doors, which relates to the framing of the windows and doors, is different from the connotation of UNIFRAME in the context of a metal ladder.

For the foregoing reasons, including the different nature and purposes of the goods and the limited scope of protection to be accorded to the suggestive mark UNIFRAME for windows and doors, we find that applicant's mark for metal ladders is not likely to cause confusion with the registered mark for vinyl windows and doors. However, this is not to say that, on a different record, we might not come to a different conclusion.

Decision: The refusal of registration is reversed.

Simms, Administrative Trademark Judge, concurring:

I concur in the conclusion that confusion is not likely, but for somewhat different reasons.

First, I believe that the respective marks are not likely to be distinguished because of any different suggestive connotation or meaning. Rather, both marks would appear to have the same connotation. However, this connotation is indeed suggestive of the construction of the respective goods, and, without evidence of the strength of registrant's mark in this case, it must be considered a relatively "weak" one entitled to a fairly limited scope of protection.

While the record contains some evidence that ladders and windows or doors may be made by the same entity, I do not believe that, in this case, that evidence is controlling. More important, in my opinion, would be evidence concerning the channels of trade of the respective goods, because manufacturing channels (evidence that these goods may be made by the same entity) and trade channels (evidence that these goods may be promoted together and

sold in the same stores) may not be the same. See *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). While one can perhaps take judicial notice of the fact that windows, doors and ladders may be sold in the same hardware stores or home centers, as the majority has noted a great number of items are brought together in such stores. A stronger case could be made out if there was evidence of the joint promotion of such items by the same company under similar marks, showing the exposure to the relevant public of the same goods under the same mark.

Moreover, ladders and windows and doors are specifically different products with completely different purposes and uses. Windows and doors are, of course, items used in the building and remodeling of homes and other structures whereas ladders are used in painting as well as in general repair and maintenance. These goods are not commercially related, and while they may be sold in some of the same channels of trade, there is no evidence that these goods are likely to be sold together in hardware stores and home centers.

It is also worthy of mention that windows, doors and ladders are not inexpensive items which would be casually purchased.



I also agree with the majority that a different record might result in a different conclusion. For example, as indicated, if there was evidence that consumers were exposed to advertising or promotion of these goods from the same manufacturer under the same mark (rather than simply third-party registrations of which consumers are unaware), or if the registered mark were more arbitrary or well known, those facts might lead us to reach a different result.